

BILL ANALYSIS

H.B. 721
By: Oakley

Senate Bill Analysis
5/25/89
Enrolled

BACKGROUND

Most charitable organizations have relied upon the volunteer services of trustees for business advice and other professional services. In recent years, lawsuits against charities have placed the personal assets of individual trustees at risk. Voluntary participation of citizens on such charitable boards has been jeopardized. Proponents of the bill assert that charities need to be able to assure trustees that none of their personal assets will be threatened as a result of their participation on the charitable board. These people feel non profit corporations should be allowed to provide the same security to trustees that business corporations provide in directors and officers liability insurance.

PURPOSE

As proposed, H.B. 721 allows non profit corporations to provide assurance to those persons serving as trustees that personal assets will not be exposed as a result of liabilities incurred by their service.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section R, Article 2.22A, Texas Non-Profit Corporation Act, Article 1396-2.22A, V.T.C.S., as follows:

(2)(a) Allows a corporation, in addition to the powers described in Subsection (1) of this section, to insure or enter into other arrangements on behalf of any person who is or was a director, officer, or trustee of the corporation against any liability asserted against him and incurred by him in his official capacity whether or not the corporation would have the power to indemnify him against that liability under this article.

(b) Provides that if an arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify a person only if coverage for that liability has been approved by the corporation's members, if the corporation has members.

(c) Allows a corporation to create a trust fund, establish any form of self-insurance, secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation, or establish a letter of credit, guaranty, or surety arrangement, for the benefit of directors, officers, or trustees.

(d) Provides that any liability indemnification arrangement, other than coverage through an insurance carrier, allowed by this subsection is not considered to be the business of insurance under the Insurance Code or any other law of this state, and are declared inapplicable to any other arrangement for liability indemnification organized and operated under this subsection.

(3) Allows the insurance to be procured or maintained with an insurer, or allows the other arrangement to be procured, maintained, or established within the corporation or with any insurer or other person considered appropriate by the board of directors, regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. Provides for the board to conclusively establish certain facts about the insurance or the arrangement and provide that the insurance or arrangement are not voidable and do not subject the approving directors to liability.

SECTION 2. Effective date: September 1, 1989.

SECTION 3. Emergency clause.